

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.)	
PELVIC REPAIR SYSTEM)	
PRODUCTS LIABILITY LITIGATION)	MDL No. 2326
)	
)	HONORABLE JUDGE JOSEPH R.
)	GOODWIN
)	

UNOPPOSED MOTION FOR APPROVAL OF QUALIFIED SETTLEMENT FUND

McDonald Worley, P.C. (“McDonald Worley”), as counsel for certain plaintiffs in this MDL 2326, hereby moves the Court for entry of an Order to aid in the efficient processing and administration of a Confidential Master Settlement Agreement (the “Settlement Agreement”) between Defendant Boston Scientific Corporation and its parent and subsidiary companies (“BSC”) and McDonald Worley to resolve the claims of certain claimants against BSC relating to BSC Pelvic Products (as defined in the Settlement Agreement).¹ BSC does not oppose this motion. In support of its motion McDonald Worley states as follows:

1. This Motion seeks an Order (1) approving the escrow agreement (“McDonald Worley BSC Escrow Agreement”), attached hereto as Exhibit A, which forms a settlement escrow account named the McDonald Worley BSC Qualified Settlement Fund (“Settlement Escrow”) pursuant to the terms of the Settlement Agreement, (2) retaining continuing jurisdiction and supervision over the Settlement Escrow, and (3) determining that the Settlement Escrow, including any subaccounts thereof (“Accounts”), together constitute a single “qualified settlement fund” within the meaning of section 468B of the Internal Revenue Code of 1986, as

¹ The Settlement Agreement is not being filed with the Court because it contains confidential terms.

amended (“Code”) and Treasury Regulation sections 1.468B-1, *et seq.* (“Regulations”).

2. BSC and McDonald Worley have agreed to establish the Settlement Escrow as a “qualified settlement fund” under the Code, subject to Court approval. The exact allocation among and distribution to persons or entities asserting a claim of subrogation or reimbursement, has not been finalized at this time. Payment of required settlement amounts into a qualified settlement fund will afford Claimants’ Counsel time to identify and resolve liens and/or subrogation rights, while knowing that funds are available and held by a third party. The Court should approve the establishment of the Settlement Escrow as a “qualified settlement fund” under the Code and Regulations, subject to the Court’s continuing jurisdiction, as in the best interest of BSC, McDonald Worley and the claimants covered by the Settlement Agreement. Without approval by and continuing jurisdiction of the Court, the Settlement Escrow would neither satisfy the terms of the Settlement Agreement, nor satisfy the requirements of section 1.468A-1(c)(1) of the Regulations, which requires that a qualified settlement fund be “established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia) territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law)... and is subject to the continuing jurisdiction of that governmental authority.”

3. The Settlement Escrow will qualify as a “qualified settlement fund” under section 468B of the Code and sections 1.4668B-1, *et seq.* of the Regulations, as: (1) the Settlement Escrow is being established subject to approval of the Court, and will be operated pursuant to the terms and conditions of the McDonald Worley BSC Escrow Agreement; (2) the Settlement Escrow will be subject to the continuing jurisdiction and supervision of the Court; (3) the Settlement Escrow is being established to resolve or satisfy claims of alleged tort or violation of

law arising out of implantation of one or Boston Scientific Products; and (4) the Settlement Escrow will be an escrow account, and its assets will be segregated from the general assets of the transferor and deposited therein. The Escrow Agreement will establish Accounts to be used solely for permissible purposes in administering the Settlement Agreement, and, with approval of BSC and McDonald Worley, the Escrow Agent may establish additional Accounts for purposes of administration of the Settlement agreement. The Settlement Escrow, including all Accounts which may be established, together constitute a single qualified settlement fund.

4. McDonald Worley has selected, and asks the court to appoint Providio MediSolutions LLC (“Providio”), as the Qualified Settlement Fund Administrator (the “QSF Administrator”) pursuant to the terms, conditions, and restrictions of the Master Settlement Agreement (“MSA”); and Esquire Bank (“the Bank”) as the financial institution that will hold the Settlement Funds within the meaning of section 1.46B-2(k)(3) of the Regulations. The funds held by the Bank in the Settlement Escrow shall be disbursed by the QSF Administrator only pursuant to and in conformance with the terms of the McDonald Worley BSC Escrow Agreement and the Settlement Agreement, which also include provisions for payments into the MDL 2326 Fund.

5. McDonald Worley states that it has conferred with counsel for Defendant, and counsel for Defendant have authorized Claimants’ Counsel to represent that Defendant consents to the granting of this motion.

CONCLUSION

For the reasons stated above, McDonald Worley respectfully requests that the Court approve establishment of the Settlement Escrow as a qualified settlement fund, and enter an Order in the form submitted herewith.

DATED: March 13, 2017

Respectfully submitted,

By: /s/ McDonald S. Worley
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served electronically via the Court's ECF system on March 13, 2017, which will automatically deliver a copy of the foregoing via Notice of Electronic Filing to all parties and counsel of record who are registered ECF users.

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